

REMARKS

Reconsideration of the present application in view of the above claim amendments following remarks is respectfully requested.

Status of the Claims

Claims 12-17, 19-21 and 32 are presented. Claims 19 and 32 are amended. Claim 19 is amended to correct editing oversights and for clarity. Claim 32 is amended to include the Markush group of dermatopharmaceutical auxiliaries/additives, to indicate that the pulp extract is a **solvent** extract, and to indicate that the skin to which the composition is applied is **in need thereof**. Support for the former is found in the substitute specification as originally filed, *inter alia*, on page 13. Support for the latter (solvent extract; skin in need thereof) is found throughout the substitute specification as originally filed. No claims are cancelled, and no new claims are added in the present action.

No new matter has been introduced.

Summary of the Invention as Claimed

The claims as presently amended are directed to a method of treating skin damaged by UV-A and/or UV-B radiation, comprising applying to skin **in need thereof**, a composition comprising (a) a **solvent** extract from the pulp of *Argania spinosa* fruit; and (b) at least one dermatopharmaceutical auxiliary and/or additive, **selected from a Markush group of such auxiliaries and additives** (claim 32). In certain preferred embodiments (claim 19) the extract of the method is selected from the group consisting of a non-saponifiable fraction, a triterpene fraction, lupeol, alpha- amyrine, beta-amyryne, taraxasterol and psi-taraxasterol.

Rejections under 35 U.S.C. § 103(a)

Previously pending claims 12-17, 19, 21 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Charrouf et al. (*Plantes Medicinales*

et Phytotherapie 25 (203), 112-119, 1991, "Charrouf") in view of Fabre et al. (FR 2724663A1; "Fabre"), further in view of Charrouf et al. (EP 1213025 A1; "Charrouf '025"). Applicants respectfully traverse the Examiner's rejection.

Charrouf discloses the identity of some of the major components of the unsaponifiable fraction of the hexane extract of the fruit pulp of *Argania spinosa* (Argan). No specific utility for this pulp extract is reported, although the introduction mentions that **Argan oil** has been used in traditional medicine for treating skin diseases. It is clear from the structure of the introductory sentences that the Argan oil is derived from the **oleaginous seeds**. Thus,

"It produces a fruit called "Argan" which is formed of a fleshy part or pulp and a very hard core containing an oleaginous seed. The Argan oil extracted using traditional methods is used for culinary purposes and in traditional medicine for diseases of the skin...(page 1, bottom, through page 2, top)

The term "oleaginous" means "oil containing". Thus, the discussion flows naturally from the oil-containing seed to the Argan oil. Further, Wikipedia, a commonly used on-line resource, states that "argan oil is an oil produced from the **kernels [or seeds]** of the argan tree, endemic to Morocco, that is valued for its nutritive, cosmetic and numerous medicinal properties", and "for industrial or laboratory purposes, argan oil can be extracted from ground **kernels** using any volatile lipophilic solvent" (Wikipedia article on argan oil, http://en.wikipedia.org/wiki/Argan_oil, accessed on October 4, 2010; emphasis added).

Fabre discloses a process for enriching Argan **oil, again from the seeds**. Fabre teaches that this oil has utility in preventing skin from aging and drying out.

Charrouf '025 discloses **aqueous** extracts of *Argania spinosa* **leaves**, and cosmetic or dermatological preparations for skin and/or hair care containing such extracts. These **aqueous leaf** extracts are described as being active as

sunscreens, and are cited as effective in a whole host of utilities, including antiinflammatory, antimicrobial, antioxidant, protease-inhibiting, antibacterial, anti-ageing, and for treating sensitive or allergy-affected skin. In contrast, as clearly claimed in withdrawn claim 22, and as now recited in base claim 32, applicants' process is directed to a **solvent** extract of the **fruit pulp**. One skilled in the art would expect completely different components to be extracted using water (aqueous extract) versus a lipophilic organic solvent such as hexane or heptane, the preferred solvents. Therefore, one skilled in the art would not expect the **aqueous** leaf extracts of Charrouf '025 to be able to substitute for applicants' **solvent** extract of the fruit pulp, differing both in the part of the plant used as well as in the nature of the extracting solvent.

In conclusion, none of these references describes a utility for a **solvent** extract of the **fruit pulp** of *Argania spinosa*. As recited in Applicants' specification, page 8, lines 4-11,

"The use of the extract of the pulp of the fruit of *Argania spinosa* for cosmetic or pharmaceutical purposes is surprising and not obvious to the skilled artisan because to date the pulp of the fruit of *Argania spinosa* has been regarded and used only as a by-product of the fruit of low value. Up to now the oleaginous seeds have been used to produce oil for food or for cosmetic purposes. The pulp has been discarded or it has been used to feed cattle. The present invention provides for a use of the pulp of much higher value. Thus the use of the pulp for high value purposes like cosmetic and pharmaceutical applications means to recycle waste for high value applications."

Thus, the utility of a solvent extract of the fruit pulp is absent from the art, and there is certainly no suggestion to use a **solvent** extract from the **fruit pulp** to treat **damaged** skin.

Previously pending claims 12-17, 19-21 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Charrouf, Fabre and Charrouf '025", further in view of Martin et al. (US 6,616,936; "Martin"). Applicants respectfully traverse the Examiner's rejection.

Martin discloses a composition comprising an oil-in-water emulsion and argan oil as an emollient.

Applicants respectfully submit, that there is nothing in Martin which overcomes any of the substantial deficiencies in the Examiner's rejection as discussed above.

Conclusion

In summary, in view of the above claim amendments and remarks, applicants believe that all of the pending claims as amended are in condition for allowance. The Examiner is respectfully requested to reconsider, withdraw the rejections and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

Respectfully submitted,

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